

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Charles STEVENS,

Petitioner,

v.

Michael MARTEL, Acting Warden of San Quentin
State Prison,¹

Respondent.

Case Number 3-9-cv-137-WHA

DEATH-PENALTY CASE

ORDER DENYING PETITIONER'S
MOTION REGARDING DISCOVERY

Petitioner is a condemned inmate at San Quentin State Prison who is awaiting the appointment of federal habeas counsel. Petitioner, proceeding pro se, has filed a motion captioned "Requesting Review of Due Process." (Doc. No. 11.)

Petitioner, proceeding in propria persona, filed a motion for discovery in Alameda Superior Court, which was denied without prejudice. (Doc. No. 11-1 at 1–2.) The California Court of Appeal subsequently denied a petition for writ of mandate. (*Id.* at 3.) Petitioner then sought review in the California Supreme Court. However, the clerk of that court did not file Petitioner's request, informing Petitioner that, "Because you are represented by counsel, you are not entitled to submit the request yourself." (*Id.* at 4.)

¹ Michael Martel is automatically substituted for his predecessor as Respondent pursuant to Federal Rule of Civil Procedure 25(d).


1 Petitioner now seeks an order from this Court granting the discovery he was denied in
2 state court or, alternatively, directing the California Supreme Court to file and consider his
3 request on the merits. However, this federal court lacks jurisdiction over the state courts, and a
4 federal court (unlike state courts) is not permitted to grant discovery in a habeas action until after
5 a petition has been filed. *Calderon v. U.S. Dist. Ct. (Nicolaus)*, 98 F.3d 1102 (9th Cir. 1996).
6 The Court therefore has no choice but to deny Petitioner’s motion.

7 The Court notes that the Alameda Superior Court denied Petitioner’s motion *without*
8 *prejudice*. This means that that court will reconsider Petitioner’s motion for discovery if he
9 complies with the terms of the court’s order. It therefore appears that Petitioner still may be able
10 to obtain the discovery he seeks.

11 Good cause appearing therefor, Petitioner’s motion regarding discovery, captioned
12 “Requesting Review of Due Process,” is denied.

13 *It is so ordered.*

14
15 DATED: May 3, 2011

16 
17 _____
18 WILLIAM H. ALSUP
19 United States District Judge
20
21
22
23
24
25
26
27
28